

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 49/AIL/Lab./J/2010, dated 18th March 2010)

NOTIFICATION

Whereas, the Award in I. D. No. 33/2001, dated 24-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Enviro Care Pollution Control Engineers Private Limited, Puducherry and its workman Thiru V. Danacody over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
 Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

*Present : Thiru E.M.K.S. SIDDHARTHAR, B.A. B.L.,
 Presiding Officer,
 II Additional District Judge.*

Tuesday, the 24th day of November 2009

I.D. No. 33 of 2001

V. Danacody .. Petitioner

Versus

The Managing Director,
 M/s. Enviro Care Engineers and
 Consultants, Pondicherry. .. Respondent

This industrial dispute coming on 16-11-2009 for final hearing before me in the presence of Thiru L. Ramalingam, counsel for the petitioner and Thiru K. Babu, counsel for the respondent and on hearing both sides and upon perusing the case records and having stood over till this day for consideration, the court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* Notification G. O. Rt. No. 130/2001/ AIL/L, dated 16-7-2001 to decide the following issues:

(1) Whether the claim of Thiru V. Danacody for reinstatement with continuity of service and back wages against the management of M/s. Enviro Care Pollution Control Engineers Private Limited, Pondicherry is justified or not?

(2) To what relief/benefits, the said workman is entitled to?

(3) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The averments in the claim statement are as follows:

The petitioner joined in the service of the respondent concern as Effluent Treatment Plant Operator (ETP) during January 1994 and discharged his service to the utmost satisfaction of the management till 17-7-1999 on a monthly salary of Rs. 1750 and on 13-7-1999, the petitioner was terminated illegally on false charges of misconduct and also his salary for the period from 1-7-1999 to 13-7-1999 was not paid and thereafter all his attempts for an amicable settlement with the management ended in vain. Therefore, the petitioner raised an industrial dispute against the respondent over his non-employment and other benefits before the Labour Officer (Conciliation) through his representation, dated 10-8-1999. Immediately after the termination of the petitioner on 13-7-1999, a certificate of appreciation was also issued by the respondent's concern on 19-7-1999. During his employment he was paid a monthly salary ranging from Rs. 1500 to Rs. 1750 from January 1994 to 13-7-1999 and he was not paid his labour benefits such as EPF, ESI and even his termination was not in accordance with law and no memo of charge sheet was given and also no disciplinary proceedings or enquiry had been conducted and the respondent directly resorted to illegal termination of the petitioner without adhering the basic principles of labour enactments. The management did not come forward to offer their views and defence before the conciliation in spite of several notices and hence this industrial dispute was referred to this Labour Court for adjudication.

Due to the unlawful termination of his services by the respondent, he has been rendered unemployment as a result of which the petitioner sustained heavy damages and that the petitioner restricted his claim for damages to the tune of Rs. one lakh and hence prayed an order directing the respondent to reinstate the petitioner as Plant Operator (ETP) with back wages, continuity of service and all other attendant benefits in addition to the damages to the tune of Rs. one lakh.

3. The contentions of the respondent in the counter statement are as follows:

The claim made by the petitioner over his alleged non-employment is not maintainable in law or on facts and hence liable to be dismissed. The respondent is basically an Environmental Consultant, providing consultancy services under the name and style of 'Enviro Care Engineers and Consultants' to various industrial establishments in improving their waste water treatment systems and air pollution control systems. The nature of jobs undertaken by the respondent are basically time-bound maintenance consultancy contract from industries. The activities of the respondent do not relate to manufacture of any equipments or any other products whatsoever. There are possibilities that the services provided by the respondent and retained by the industries could be withdrawn with shorten notices. Hence, the respondent is not an industry. In the process of operating waste water treatment plants in such of the industries, normally, the client industries themselves will provide man power, certain semi-skilled labourers and the respondent used to train them on the steps required for waste water treatment. If need arises, the respondent would also additionally avail the services of his own labourers on day-to-day basis to perform the works of pumping of waste water from collection sump into the treatment plant to achieve the required treatment. Some times in certain seasonal contracts with seasonal industries, some semi-skilled labourers will be appointed by the respondent for such period of contract with the industry, and the respondent will himself directly train them for pumping waste water, addition of required treatment chemicals, removal of dry sludge after separation and pumping of treated waste water for either irrigation or into sewers.

4. The petitioner approached the respondent for a job during April 1996, and on the verbal understanding that he would work as a casual labourer only during the crushing season at M/s. New Horizon Sugar Mills, Pondicherry (the respondent's only client at that time), he was engaged on temporary basis from 3rd week of April 1996. The petitioner continued to work till the end of that season which ended by middle of June 1996. During that period, he was paid a salary of Rs. 40 per day. Subsequently, after a long interval, he came and worked from January 1997 to middle of April 1997 at the site and during this period, he was paid Rs. 50 per day. Again, after a long lapse of time, in the month of January 1999, on his approach, the petitioner was given work on temporary basis by the respondent at Sri Bharati Mills, Pondicherry to work at the waste water treatment plant. During this period, he was paid at Rs. 67 per day. On completion of his work in the month of July 1999, the petitioner approached the respondent and stated that he is looking for a permanent job and that he had applied for certain factories for the job of Waste Water Treatment Plant Operator and for that purpose, he requested the respondent to issue him an Experience Certificate. Accordingly, on humanitarian ground, the respondent issued him a certificate on 19-7-1999, clearly indicating in the certificate that the petitioner worked with the respondent, with many stop gaps from January to 13th July 1999. The wages for the period of his work till 13-7-1999 was completely paid to him and there is no due whatsoever. While this being the fact, the petitioner had made out a false and vexatious claim against this respondent by putting his own baseless imaginations with the certificate issued by the respondent, only to grab money from the respondent. The experience certificate filed by the petitioner itself would show that the petitioner had peacefully quitted the job by 13-7-1999 and that there is no due for him. Hence, the petitioner is clearly estopped from raising any dispute or claiming anything from the respondent. Now, the petitioner with ulterior motive is trying to misuse the said certificate issued by the respondent. The act of the petitioner is clear misuse of the certificate issued by the respondent and a clear abuse of the process of law. The contention of the petitioner that the respondent had illegally terminated the petitioner without enquiry is absolutely untenable in view of the facts stated above and that the claim of the petitioner for huge compensation combined with reinstatement, back wages, continuity of service and all other

attendant benefits is not sustainable and hence, there is no merits in the claim petition and prayed this court to dismiss the industrial dispute.

5. Now, the point for consideration is :

Whether the petitioner is entitled for reinstatement, with back wages, continuity of service and all other attendant benefits and for damages?

6. On the side of the petitioner, the petitioner himself examined as PW1 and marked Ex.P1. On the side of the respondent, no oral or documentary evidence was adduced.

7. *On point:*

The petitioner claimed that he had been under the employment for more than five years and that he was terminated illegally on 13-7-1999 on false charges of misconduct. Except this bald allegation that he was terminated on false charges, the petitioner did not produce any evidence or let in any satisfactory oral evidence to prove that he was illegally terminated on false charges. On the other hand, the respondent has proved that he was a service provider for various units and that he is not an industry in the legal sense. Elaborate written arguments was also filed on the side of the respondent in proof of his contention.

8. As rightly pointed out and relied by the respondent, the decision of the Hon'ble High Court, Madras reported in 1968 ILLJ 682 Fraser and Rose *Versus* Sambasive Ayyer wherein the Madras High Court had observed that the services rendered by a learned profession are primarily characterised by an equipment of learning, skill or judgment, acquired through intellectual means. So long as these criteria are fulfilled, such a profession is a learned profession and does not come under the ambit of industrial law.

9. The respondent claimed that he is a service provider for various industrial units. During cross-examination, it has been elicited from PW1 as follows:—

'The respondent used to get employment to him in the companies in which the respondent enters into contract or providing service for treatment..... The respondent used to take us to one company after another daily. The services undertaken by the respondent are time-bound. It is true that if the respondent gets the contract of employment for providing services, the workers would also get employment.'

10. The petitioner's claim is based on Ex.P1. On perusal of Ex.P1, it is an Experience Certificate issued by the respondent as Chief Executive of Enviro Care Engineers and Consultants. It is dated 19-7-1999. The Certificate states as follows: ".....with many stop gaps from the year January 1994 to 13th July 1999". It is true that Ex.P1 itself reveal that the petitioner was engaged by the respondent, a service provider for intermittent spells at different sites with many stop gaps from the year 1994 to 1999. Considering Ex.P1 coupled with the demand of PW1 as extracted above and the fact that the respondent is not an industry as defined under section 2(j) of the Industrial Disputes Act, I hold that the petitioner is not entitled to get any relief before this court.

11. The claim of termination on false charges is totally a concocted story for the purpose of seeking some relief before the Labour Court. In fact, the claim of the petitioner for damages of Rs.one lakh itself shows that he is trying to get undue peculiar advantage from the respondent who is just a service provider to many industrial units and his engagement itself is only temporary, whenever there is work provided to him, otherwise the respondent himself would be out of work. When the respondent himself happened to be out of work during off season or when there is no necessity or requirement of his service, it is fallacious and unreasonable on the part of the petitioner to expect continuous employment from the respondent. The petitioner is too greedy and the claim of the petitioner fails as unreasonable, unproved and as against law.

12. In the result, the claim of the petitioner for his reinstatement in the respondent company with continuity of service and back wages is not justified and hence dismissed.

• However, the respondent is hereby directed to reconsider the petitioner for reappointment when vacancy arises.

• Both parties are directed to bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this 24th day of November 2009.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
II Additional District Judge,
Puducherry.

List of witnesses examined on the side of the petitioner :

PW1— 8-10-2004 V. Danacody (Petitioner)

*List of exhibits marked on the side of the petitioner :*Ex.Pl— 8-10-2004 Certificate, dated 19-7-1999
issued by the respondent in
favour of the petitioner.*List of witnesses examined on the side of the respondent : Nil**List of exhibits marked on the side of the respondent : Nil*

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
II Additional District Judge,
Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 50/AIL/Lab./J/2010, dated 18th March 2010)

NOTIFICATION

Whereas, the Award in I. D. No. 40/2001, dated 24-12-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Sarvodaya Sangh, Puducherry and its employees Thiruvalargal T. Raju and M. Muthukumarasamy over their dismissal from service has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Tuesday, the 19th day of January 2009

I.D. No. 40/2001

1. T. Raju
2. Muthukumarasamy . . Petitioners

Versus

1. The President,
Pondicherry Sarvodaya Sangh,
Pondicherry.
2. The Secretary, Pondicherry
Sarvodaya Sangh . . Respondents

This industrial dispute coming on 8-1-2010 for final hearing before me in the presence of Thiru B. Mohandoss, Advocate for the petitioners, Thiru P.J.X. Vedanayagam, Advocate for the respondents, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.141/2001/AIL/L, dated 26-7-2001 for adjudication of the following industrial dispute that arose between the management of Pondicherry Sarvodaya Sangham, Pondicherry and its workmen T. Raju and M. Muthukumarasamy for adjudicating the following:—

(a) Whether the dismissal of T. Raju and Muthukumarasamy from service by the management of Pondicherry Sarvodaya Sangham is justified or not? If not to give appropriate direction.

(b) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows:

The petitioner joined the Sangh in the year 1977 and became its member in the year 1982 and since then had been actively participating in all the affairs of the Sangh. He has served as Treasurer and the tenure as Treasurer is to end on 18-8-2001. First and second respondents were nominated as President and Secretary of the Sangh respectively in July 1998. However, after the change of guard of the functioning of the Sangh into the hands of the 2nd respondent, the Sangh witnessed decline in production activities in all the fields of its

operation *viz.*, soap manufacturing, footwear and Agarbatti. The same had been the matter of discussion amongst the other trustees of the Sangh and the petitioner was also one of the trustees, who were seriously questioning the failures of the office-bearers of the Sangh. The Ex-treasurer of the Sangh Mr. T.K. Ramadoss had also addressed a letter to the 2nd respondent narrating his failure to augment business of the Sangh and raised some serious questions. The 2nd respondent was deeply aggrieved by the said letter and developed animosity towards all the members who had been questioning the misdeeds of the 2nd respondent.

On 18-2-1999 the second respondent issued a memo. to the petitioner, whereby he was informed that as per clause 4 of the resolution passed in the meeting, dated 17-2-1999 he is relieved from being the Treasurer and also from the membership of the Executive Committee and the General Body of the Sangh and from the post of Chief Examiner of the Sangh. Through the said memo. the 2nd respondent also appointed him as the Office In-Charge of Tindivanam Branch of Sangh. The petitioner was also served with the copy of the resolution, dated 25-2-1999 alleged to have been passed on 17-2-1999. The act of the second respondent was improper, irregular, vexatious and bad in the eye of law.

On 18-5-1999, the second respondent issued a memo alleging that the petitioner and another employee have misappropriated the funds in the year 1997-1998 in the Agarbatti Unit. The second respondent also suspended the petitioner *vide* the said memo. The memo. of suspension was strongly replied by the petitioner *vide* his letter, dated 27-5-1999. On 1-6-1999 the second respondent issued a charge-sheet levelling as many as 10 allegations against the petitioner and sought an explanation within seven days. This petitioner promptly sent his reply, dated 12-7-1999 and another letter, dated 24-7-1999 refuting all the allegations levelled against him. The second respondent also initiated a domestic enquiry against the petitioner through an outsider. The act of the 2nd respondent is illegal. Hence, he filed a suit in O.S. No. 591/2001, challenging the illegal acts of the second respondent which is pending on the file of

Principal District Munsif, Pondicherry. The petitioner also filed I.A. No. 4191/1999 in O.S. No.591/1999 to stay the domestic enquiry proceedings against the petitioner. The said I.A. was dismissed on 19-8-1999 and therefore he preferred an appeal in CMA No. 12/1999. Even before hearing the said CMA, the 2nd respondent proceeded with the domestic enquiry in the absence of the petitioner and the enquiry officer pronounced the petitioner guilty on all the allegations levelled against him by the 2nd respondent. The domestic enquiry was conducted *ex parte*, in spite of the fact that this petitioner requested an adjournment to attend on his brother, who was then admitted in hospital in the advanced stage of cancer. However, the 2nd respondent completed the enquiry in haste without giving an opportunity to the petitioner to put forth his defence. This petitioner was eventually dismissed from the services on 5-10-1999. The dismissal of the petitioner from the employment of Sangh by the 2nd respondent is illegal, unlawful, gross misuse of powers and ultra vires his powers as Secretary of the Sangh. Hence, this petition to reinstate the petitioner in the Sangh with full back wages and other attendant benefits.

3. The counter filed by the second respondent, which was adopted by the first respondent. In the counter, the respondent has admitted about the domestic enquiry and about the civil suit. After completion of domestic enquiry, which was held after granting sufficient opportunities to the petitioner, he was dismissed from service. As a Secretary, it was in the welfare of the institution to take disciplinary action against any of its erring employees. By resolution, dated 17-2-1999 action was taken by the Board by removing the petitioner from several posts held by him and he was relieved from being member of the Sangh by a unanimous resolution of the Board of Trustees. Regarding the second face as an employee, the second respondent took proper decision by conducting disciplinary proceedings in accordance with law and ultimately he was dismissed from service on 5-10-1999. Apart from that, the Board of Trustees has also empowered the Secretary by a resolution of the Board of Trustees, dated 6-5-1999 to initiate all legal action against the petitioner, FIR was registered in Cr. No.395/2000 and the petitioner was arrested by the police.

The averment concerning Kumaravelu in Paragraph 7(d) of the claim statement is irrelevant for the purpose of this petition. However, the said Kumaravelu has also given statements incriminating the petitioner in the alleged irregularities which alone is relevant.

The petitioner was given fair opportunity in the enquiry and all the charges were held to be proved with adequately supporting documents. Hence, he prays for dismissal of the petition.

4. On the side of the petitioner, the petitioner examined himself as P.W.1 and marked Exs.A1 to A13. On the side of the respondents, R.Ws.1 and 2 were examined and Exs.B1 to B38 were marked.

5. Now the point for determination is:

“Whether the management of Pondicherry Sarvodaya Sangham is justified in dismissing T. Raju and Muthukumarasamy from service?”

On point :

6. Among all the allegations against the petitioner, the most serious and gravest allegation is that for the year 1995-1996, 1996-97 and 1997-98, the petitioner fabricated bills in the name of Bala and Company for purchase of Sambirani, which never existed and in turn had earned profit to the tune of Rs.4,32,250.

7. Ex.B15 series are the stamped receipts issued by the petitioner namely, T. Raju to Bala and Company for supply of raw materials for the production of Agarbathies. Admittedly, the petitioner is the person to disburse cash to the said Bala and Company. It is well-known fact that the funds of Sangh should be utilised only for Sangh and to avoid fraud and misappropriation, cheques should be issued instead of cash disbursement. The Sangh is not sole proprietary concern or a private business firm to make payments according to whims and fancies of the petitioner. For this well-known practice, the petitioner wants bye law of the Board. The petitioner has not come forward to say what is the necessity for him to make cash payments or what prevented him or what trouble he faced for the issue of cheques. For this accusation, the petitioner gave explanation to the effect that in spite of insistence by him to make payments by way of cheque or draft, it was the respondent, who made payments by cash. It is crystal clear that only the petitioner made payments and got receipts, because all the receipts were issued only in

the name of the Secretary and the petitioner was the Secretary at that time. Ex.B15 are the stamped receipts and the details of the said receipts are given as follows:

Name of the company (1)	Date (2)	Amount (3)	Rs.
Bala and Company	20-7-1995	9,000	
Bala and Company	22-7-1995	6,000	
Bala and Company	26-7-1995	7,000	
Bala and Company	28-7-1995	7,000	
Bala and Company	11-8-1995	8,000	
Bala and Company	12-8-1995	7,000	
Bala and Company	24-8-1995	10,000	
Bala and Company	28-8-1995	8,000	
Bala and Company	21-9-1995	11,000	
Bala and Company	5-9-1995	8,500	
Bala and Company	22-10-1995	10,000	
Bala and Company	7-10-1995	10,500	
Bala and Company	31-10-1995	10,000	
Bala and Company	4-11-1995	5,000	
Bala and Company	14-11-1995	7,000	
Bala and Company	4-12-1995	5,000	
Bala and Company	7-12-1995	5,000	
Bala and Company	15-12-1995	5,000	
Bala and Company	19-12-1995	4,000	
Bala and Company	17-12-1995	8,000	
Bala and Company	22-12-1995	3,000	
Bala and Company	30-12-1995	5,000	
Bala and Company	4-1-1996	5,000	
Bala and Company	8-1-1996	5,000	
Bala and Company	15-1-1996	10,000	
Bala and Company	25-1-1996	7,000	
Bala and Company	6-2-1996	5,000	
Bala and Company	7-2-1996	5,000	
Bala and Company	8-2-1996	5,000	
Bala and Company	17-2-1996	5,000	
Bala and Company	21-2-1996	10,000	
Bala and Company	25-3-1996	8,000	
Bala and Company	27-3-1996	7,000	

(1)	(2)	(3)
		Rs.
Bala and Company	29-3-1996	8,000
Bala and Company	30-3-1996	9,000
Bala and Company	31-3-1996	8,000
Bala and Company	31-3-1996	4,650
Bala and Company	31-3-1996	5,000
Bala and Company	9-10-1996	7,000
Bala and Company	11-10-1996	8,000
Bala and Company	16-10-1996	9,000
Bala and Company	21-10-1996	8,000
Bala and Company	25-10-1996	9,000
Bala and Company	16-11-1996	10,000
Bala and Company	30-11-1996	8,000
Bala and Company	3-12-1996	6,000
Bala and Company	27-12-1996	7,000
Bala and Company	31-12-1996	8,000
Bala and Company	9-1-1997	6,500
Bala and Company	13-1-1997	7,500
Bala and Company	20-1-1997	6,500
Bala and Company	21-2-1997	5,000
Bala and Company	24-2-1997	5,000
Bala and Company	27-5-1997	10,000
Bala and Company	25-8-1997	9,000

It is the bound and duty of the petitioner to prove that the abovesaid amounts have been received by the Bala and Company by examining the concern competent person before this court. But the petitioner has failed to do so.

8. As per the petitioner, he has purchased the Agarbathies from Bala and Company. But the respondents pleaded that no such company existed. The said company was created "namesake" to grab money from Sangh. The registered post sent to the said company, was returned with an endorsement "no such company". Further there was evidence in the domestic enquiry to show that Thiru C. Narayanan and Thiru Ramalingam visited Chennai and found that no such company existed in the given address. When such serious allegation was made against the petitioner, it is for the petitioner to bring the person, who runs Bala and Company. But the petitioner simply stated in his claim petition and in the written

argument that mere returning of postal cover could not be taken as evidence. Further the petitioner states that Bala and Company might have shifted their business. Such kind of arguments prove that the petitioner has not come before this Court with clean hands.

9. The petitioner in his written argument raised the point that the respondent is not at all having power to initiate disciplinary proceedings against him. But Ex.B1 to Ex.B4 would clearly show that the respondents have sufficient power to initiate disciplinary proceedings against him. Ex.B1 is the Memorandum of Association. Ex.B2 is the copy of the Rules and Regulation. Ex.B3 and Ex.B4 are the Minutes of General Body Meeting. The show cause notice issued by Pondicherry Sarvodhaya Sangam containing ten charges, was marked as Ex.B7 through RW1. Moreover explanation seeking letter Ex.B8 was also issued. After issuance of Ex.B7 and Ex.B8, the petitioner submitted his explanation. Since the authorities were not satisfied with explanation given by the petitioner, the enquiry was ordered under Chairmanship of Thiru T. Mohan. The petitioner instead of this court perused Ex.B8 contains 9 pages. The petitioner gave reply for 10(ten) charges which have been framed against him. The reply (Ex.B8 and B9) is very vague and also the petitioner raised allegation against the respondent and respondent's staff and there is no clear reply regarding misappropriation. If the petitioner has not committed any misappropriation why he did not examine any staff of the respondent office. Therefore Ex.B8 is not accepted by this court.

10. He conducted the enquiry on 9-8-1999, 18-8-1999, 24-8-1999 and 7-9-1999. The petitioner gave telegram to the Enquiry Officer, requesting for adjournment since he filed a case. Eventhough there was no stay, the Enquiry Officer adjourned the enquiry to 18-8-1999. On that day, opportunity was given for cross-examination. On the same day, the petitioner appeared and sought adjournment. The Enquiry Officer also accepted the petitioner's request and posted to 24-8-1999. Again on that day, he appeared before the Enquiry Officer and represented that he was not ready for enquiry and prayed for adjournment. The petitioner's request was accepted and posted the enquiry to 7-9-1999 for cross-examination. After perusal of Ex.B11, the petitioner appeared before the Enquiry Officer and

again prayed for adjournment. Since the petitioner was going on praying for adjournments for cross examination, which were also granted on fourth time the enquiry was proceeded thereafter. The petitioner, on one side, tried to get stay of the enquiry by filing a civil suit and on the other side, prayed for adjournment telling that his brother was suffering from illness. On perusal of Ex.B11, this court finds ample opportunities were given to the petitioner to prove his case. Since the petitioner had not come forward to cross-examine the witnesses, the enquiry was proceeded.

11. The counsel for petitioners relied on the following decisions:-

1. 2005 (2) *L.L.N 38 (S.C) Management of Madurantakam Co-operative Sugar Mills Limited and S.Viswanathan* :

Page No.39 (3.) "Constitution of India Article 226—Allegation of demand for illegal gratification—Proof by corroborative material - Necessity of - Complaint against respondent, a clerk in the appellant mills that he demanded Rs.10 as illegal gratification in the guise of donation of temple - Acceptability - Held; Labour Court as right in rejecting said contention merely on statement of complainant without there being any corroborative material- interference by writ court is improper".

2. (2009) 1(S.C.)(L&S) 394:—

Union of India and others Versus Prakash Kumar Tandon :

C. "Department enquiry - Enquiry/Inquiry Officer - Nature of function of - Held, an Enquiry Officer is a quasi-judicial authority and should perform his functions fairly and reasonably".

D. "Departmental enquiry - Fairness - Held, if disciplinary proceedings have not been conducted fairly, presumption can be drawn that this caused prejudice to the charged employee".

3. (2009) 2(S.C.)(L&S) 197 :—

Union of India and Another Versus. Ex. Major Sudershan Gupta:

"Competent authority to order - Adverse inference against Government - When relevant records not produced - Departmental enquiry- Initiation of - Competent authority".

4. 2001 (2) *L.L.N 1109 (Madras)* :

Special Officer, Salem District Consumer Co-operative Wholesale Stores, Limited, Salem and (1) Presiding Officer, Labour Court, Salem, (2) V. Thangavel.

5. 2003 (4) *L.L.N 664 (Madras)* :—

Management of Blue Star Limited, Madras and (1) Presiding Officer, First Additional Labour Court, Madras (2) M.P. Ekambaram.

6. 2004 (2) *L.L.N 1059 (Madras)* :—

Management, Cheran Transport Corporation Limited, Coimbatore and (1) Presiding Officer, Industrial Tribunal, Madras (2) V. Arjunan. Conductor.

7. 2004 (3) *L.L.N. 94 (Allahabad)* :—

Gurucharan Singh Versus. National Thermal Power Corporation Limited and others:

"Domestic Enquiry - Removal from service Justifiability - Observance of principles of natural justice - Employee, in the enquiry against him, was denied opportunity to lead evidence - His defence was not considered - Enquiry Officer did not even discuss petitioner's reply and the disciplinary authority did not consider it proper even to mention employee's reply - Respondents were fully aware of the fact that employee was undergoing treatment in hospital - But Enquiry Officer closed the inquiry with observation that petitioner should have postponed his treatment and given priority to enquiry proceedings - Held, not only principle of natural justice but also petitioner's basic human rights have been violated - Conduct of Enquiry Officer shows bias - impugned orders quashed - Disciplinary enquiry relegated to stage of close of management's witnesses - Petitioner to be reinstated in service and paid his entire arrears of salary".

8. 2004 (3) *L.L.N 327 (Madras)* :

"Constitution of India, Art. 226 - Tamil Nadu Civil Supplies Corporation, Limited Employees' Service Regulation Chapter-V.-Domestic enquiry-Appointment of Enquiry Officer-Competent authority-Enquiry Officer appointed by Regional Manager - Held, Competent authority to appoint Enquiry Officer for imposition of major penalty

is the Managing Director- Regulations are binding on the Board - Regulation having been breached, Penalty imposed cannot be sustained- Alleged misconduct being unauthorised absence of over 700 days, order of single Judge allowing back wages held would not be proper.

This court perused all the citations. These are not applicable to the present case.

12. The Hon'ble Apex Court has stated in the following cases that the when due notice of inquiry was given to the delinquent workman and the workman did not avail the opportunity, the workman has to be blamed:-

1. In *Laxmidevi Sugar Mills Versus Ram Sarup* (AIR 1957 SC-0-82), the Hon'ble Apex Court has held that where it is established that a fair enquiry into the alleged misconduct of workmen has been held without violating the principles of natural justice and the management found the workmen guilty of misconduct with which he had been charged and the management *bona fide* finds that continuing the workmen in its employ was detrimental to discipline and dangerous in the interest of the company, the Labour Appellate Tribunal ought to have held that a *prima facie* case for the dismissal of the workmen had been made out by the company and ought to have granted the company the permission to dismiss the workmen.

2. In *Nagar Palika Nataur Versus Uttar Pradesh Public Services Tribunal Lucknow* [1998 II (SCC) 400] the Hon'ble Supreme Court has held that staying away from the inquiry and resorting to certain tactics and subsequently saying that he was not afforded an opportunity of being heard should not be encouraged.

3. In *Garfa Co-operative Stores Limited Versus Learned Second Industrial Tribunal, West Bengal and others* [2000-II-LLJ], the Hon'ble Calcutta High Court has held that the principle of affording reasonable opportunity is not one way traffic and a person charged with misconduct has to avail opportunity given and not leave enquiry without permission of Enquiry Officer and the order of dismissal and report of Enquiry Officer was upheld as valid.

4. In *Workmen of M/s. Firestone Tyre and Rubber Company of India Private Limited Versus Management and others* [1972-Indlaw SC 315], the Hon'ble Apex Court has held that once

the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

5. In *Divisional Controller, Ksrtc (NWKRTC) Versus A.T. Mane* [2004-III-LLJ-226], the Hon'ble Apex Court has held that while awarding punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration and in the opinion of the Hon'ble Apex Court, when a person is found guilty of misappropriating the corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

6. In *Uttar Pradesh State Road Transport Corporation Versus Vinod Kumar* [2007 Indlaw SC 1281], the Hon'ble Apex Court has held that where an employee is found guilty of pilferage or of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such an employee and awarding punishment of dismissal.

7. In *Bharat Heavy Electricals Limited Versus M. Chandrasekhar Reddy and others* [2005-I-LLJ-297], the Hon'ble Apex Court has held that there is no such thing as unlimited jurisdiction vested with any judicial forum and the reasons given by the Labour Court for exercising discretion under section 11-A of the Industrial Disputes Act is not proper and therefore, the interference with punishment of dismissal as vindictive or disproportionate is not justified.

13. Now the respondent is before this court and he is having opportunity to examine witnesses and to mark documents on his side. The petitioner filed petition on 4-1-2010 along with documents. This court allowed the petition and also allowed to mark documents Ex.A8 to Ex.A13. This court perused all the documents filed by the petitioner. But the said documents

are not in any way helpful to the petitioner's case. Further no oral or documentary evidence is available to prove existence of Bala and Company.

14. Further as per Ex.B13, a suit in O.S. No.591/999 was filed by the petitioner before the II Additional District Munsif, Pondicherry and the same was dismissed on 11-7-2003. But there is no appeal preferred by the petitioner against the said judgment and decree.

15. In this case, this court perused all the case records from the beginning to the end. The petitioner did not co-operate before the Enquiry Officer and also did not co-operate with this court. The respondent filed the written argument on 12-2-2007. After several battles, the petitioner filed his written arguments only on 18-1-2010, that is to say that the petitioner took nearly three years to file the written argument. The petitioner has not come forward to present his oral argument also. He is very particular in filing his written argument, but took three years time. The case is pending for about nine years. In what sense is the attitude of the petitioner is justifiable? The petitioner certainly took abnormal time before this court as well as before the enquiry officer during domestic enquiry.

16. On perusal of Ex.B3, it is seen that the General Body Meeting was conducted on 17-2-1999 and relevant portion is as follows:-

சங்க பொருளாளராக உள்ள தீரு டி. ராஜ் அவர்களை பொருளாளர், நீர்வாக குழு உறுப்பினர் மற்றும் பொதுக்குழு உறுப்பினர் பொறுப்புகளில் இருந்து விடுவித்து விடுவது எனவும் முக்கிய பரிசோதகர் பணியில் இருந்தும் விடுவித்து வேறு பணிகள் வழங்குவது எனவும். சங்கத்தின் பொருளாளராக தீரு கே. என். மந்தராஜன் அவர்களை தேர்வு செய்வது என ஒரு மனதாக தீர்மானிக்கப்பட்டது.

In the said resolution 29 persons were signed. The said minutes was not challenged by the petitioner. It is very unfortunate after careful perusal of Ex.B14 FIR registered against the petitioner regarding cash embezzlement on 12-12-2000. In FIR No.395/2000 under section 408, 468, 472 IPC reference with 34 IPC of Grand Bazaar Police Station, registered by Sub-Inspector of Police, C.I.D. Branch, the present petitioner along with three others are the accused. Being a public servant, the petitioner

engaged in cash embezzlement, further this perused Ex.B14, the copy of the F.I.R. No.395/2000 after Ex.B14 the petitioner did not approach the court for quashing the First Information Report. If the charges are false and vogue, why the petitioner did not appear before this court for quashing the First Information Report. Hence, there is *prima facie* evidence against him. Therefore, the petitioner is not entitled for reinstatement. Hence, the petition is dismissed with costs.

17. In the result, the petition is dismissed with costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 24th day of December, 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for petitioner :

P.W.1 24-3-2003 T. Raju

List of witnesses examined for respondents :

R.W.1 7-6-2004 Narayanan, Secretary of respondent.

R.W.2 12-10-2006 Bedagum

List of exhibits marked for petitioner :

Ex.A1 Letter of petitioner to the enquiry officer, dated 9-9-1999.

Ex.A2 Balance sheet of the respondent for the year 1994-95.

Ex.A3 Balance sheet of the respondent for the year 1995-96.

Ex.A4 Balance sheet of the respondent for the year 1996-97.

Ex.A5 Circular, dated 21-3-2003.

Ex.A6 Duplicate letter given by the petitioner, dated 20-3-2006.

Ex.A7 Copy of REI, dated 27-3-1998.

Ex.A8 Copy of memo, dated 25-3-1996.

Ex.A9 Copy of respondent's letter to respondent's Secretary, dated 25-4-1994.

Ex.A10 Circular of respondent, dated 5-2-1996.
 Ex.A11 Circular of respondent, dated 21-3-1997.
 Ex.A12 Copy of respondent's memo, dated 31-3-1998.
 Ex.A13 Copy of Judgment in O.S.591/99, dated 11-7-2003 of II ADM, Pondy.

List of exhibits marked for the respondent :

Ex.B1 Copy of Memorandum of Association.
 Ex.B2 Copy of Rules and Regulations.
 Ex.B3 Minutes of General body Meeting, dated 17-2-1999.
 Ex.B4 Minutes of General Body Meeting, dated 6-5-1999.
 Ex.B5 Copy of Order in IA.191/99, dated 19-8-1999 on the file of II ADM, Pondy.
 Ex.B6 Order of respondent, dated 18-5-1999.
 Ex.B7 Copy of show cause notice to petitioner, dated 1-6-1999.
 Ex.B8 Copy of reply notice by the petitioner, dated 12-7-1999.
 Ex.B9 Copy of reply notice by petitioner, dated 24-7-1999.
 Ex.B10 Notice of domestic enquiry, dated 9-8-1999.
 Ex.B11 Report of domestic enquiry.
 Ex.B12 Registered post with Acknowledgement Card, dated 17-9-1999.
 Ex.B13 Registered post with Acknowledgement Card, dated 5-10-1999.
 Ex.B14 Copy of FIR No.395/2000.
 Ex.B15 Receipt of Bala and Company.
 Ex.B16 Bala and Company bill.
 Ex.B17 Returned postal cover.
 Ex.B18 Circular, dated 20-3-1996.
 Ex.B19 Bill of Sri Kamatchiamman Silk Cotton Industries, dated 5-6-1996.
 Ex.B20 Letter to respondents' Secretary by R.W.2. dated 11-3-1999.
 Ex.B21 Letter to respondents' Secretary by R.W.2, dated 16-3-1999.

Ex.B22 Letter to respondents' Secretary by R.W.2, dated 15-3-1999.
 Ex.B23 Letter to respondents' Secretary by Govindarajalu, dated 10-3-1999.
 Ex.B24 Letter to respondents' Secretary by S. Kittu, dated 10-3-1999.
 Ex.B25 Stock particulars in brief.
 Ex.B26 Bill issued by Saravanan Engineering, dated 15-7-1997.
 Ex.B27 Stock details.
 Ex.B28 Stock sheets gate.
 Ex.B29 Stock sheets gate.
 Ex.B30 Invoice.
 Ex.B31 Agarbathi Unit stock sheet.
 Ex.B32 Letter issued by Kumaravelu, dated 14-7-1999.
 Ex.B33 General ledger entry at page 843.
 Ex.B34 General ledger entry at page 853.
 Ex.B35 Respondents' letter, dated 25-9-1998.
 Ex.B36 Letter, dated 2-2-1999.
 Ex.B37 Dairy Report, dated 18-9-1998.
 Ex.B38 Dairy Report, dated 24-9-1998.

E.M.K.S. SIDDHARTHAR,
 II Additional District Judge,
 Presiding Officer,
 Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 52/AIL/Lab./J/2010, dated 18th March 2010)

NOTIFICATION

Whereas, the Award in I.D. No.23/2001, dated 24-12-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills, Puducherry and their workmen represented by Sri Bharathi Mills Thozhilalar Urimai Padukappu Sangam-over regularisation of services of 1. R. Suresh Anandhu, T.No. 8200, 2. A. Kumar, T. N. No. 8201, 3. G. Kamaraj, T. No. 8202, 4. G. Panneerselvam, T.No. 8203 and 5. I. Ramaraj, T. No. 8204 has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

*Present : Thiru E.M.K.S. SIDDHARTHAR, M.A. B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.*

Thursday, the 24th day of December 2009

I.D. No. 23/2001

The President,
Sri Bharathi Mills Thizhilalar
Urimai Padukappu Sangam,
Pondicherry .. Petitioner
Versus

Sri Bharathi Mills,
Pondicherry .. Respondent

This industrial dispute coming on 22-12-2009 for final hearing before me in the presence of Thiru B. Mohandoss, Advocate for the petitioner, Mrs. V. Usha, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.96/2001/Lab./L, dated 30-5-2001 for adjudication of the following industrial dispute that arose between the management of Sri Bharathi Mills, Pondicherry and its workmen represented by Sri Bharathi Mills Thozhilalar Urimai Padukappu Sangam for adjudicating the following:-

(a) Whether the demand of the Union that the services of 1. R. Suresh Anandhu, T. No.8202, 2. A. Kumar, T.N. No.8201, 3. G. Ramaraj, T. No.8202, 4. G. Panneerselvam, T. No.8203 and I. Kamaraj, T. No. 8204 should be regularised by the management of Sri Bharathi Mills, Pondicherry is justified? If so, to give appropriate directions.

(b) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows:

The petitioner workmen joined the service of the respondent mills in the year 1995 as casual labourers in the Electrical Department based on the settlement between the management and workmen under section 18(1) of the Industrial Disputes Act, 1947 relating to workload in the respondent mills. According to that settlement cadre strength in each and every department was determined and in the electrical department, the abovesaid workmen were included in the cadre strength. Ever since the date of appointment, the abovesaid workmen have been continuously engaged by the respondent and there is no break in service. The said workmen were originally paid the wages at the rate of Rs.40 per day which was subsequently revised to Rs.45 followed by upward revision of the same to Rs. 80 and last revision was made at Rs.120 per day which is being paid even today. The petitioner union sponsored the industrial dispute pertaining to said workmen in respect of their regularisation of services with the respondent. Originally the said workmen made a representation, dated 23-11-2000 to the Labour Officer (Conciliation) after their attempt with the General Manager of the respondent mills did not yield any fruitful result. The respondent submitted reply, dated 9-2-2001 rejecting the case of the petitioner for granting permanency on unmeritorious grounds and with vexatious allegations. This made the petitioner to submit a rejoinder, dated 22-3-2001 seeking intervention of the Conciliation Officer in the industrial dispute raised by the petitioner. Ultimately the dispute ended in failure resulting in the submission of failure report, dated 19-4-2001 by the Conciliation Officer. There is no reason why the said workmen should be distinguished from others who have already been regularised. The concept of equality as contemplated under Articles 14 and 16 of the Constitution of India calls for the treatment of the

above workmen on par with the other regular employees. The obligation of the State as envisaged by the direct principles of State Policy in Articles 42 and 43 of Indian Constitution mandates the respondent, who is an agency or instrumentality of the State to regularise the services of the said workmen and to grant all benefits in accordance with permanent status. According to the provisions of the Standing Orders of the respondent mills higher status or promotions are to be granted based on the attendance ability to work as contemplated under Standing Order No. 13. The reasons stated by the respondent before the Conciliation Officer for not regularising the services of the workmen concerned like ban order on new recruitment as imposed by the Government of India are irrelevant ones. This court may take note of the fact that the workmen concerned having been in service already prior to the ban order, they cannot by any stretch of imagination be considered to be new recruits when the services are to be regularised. Hence, the petitioner prays to regularise the said workmen.

3. In the counter statement filed by the respondent it is contended that it is true that the petitioner workmen are employed in the mills of the respondent as casual coolies on daily paid basis in the Electrical Department, since they were qualified to be engaged as Electricians/Wireman. At the time of taking the said workmen as casual coolies, they were informed by the management that as and when their services were required, they would be engaged as Casual Coolies and they would not be considered for regularisation or for permanency since a ban on recruitment was already in vogue by the Government of India. Since the respondent mill being a Public Sector Undertaking under Government of India, the normal mode of recruitment would be through Employment Exchange. As far as these petitioners are concerned, they were not taken through Employment Exchange as their employment was neither sanctified by the Government nor post are of a permanent in nature. Hence, the claim of the petitioner for regularisation could not be sustained either on law and on facts.

For the past ten years, there is a ban on recruitment by the Government of India and the respondent mills being a Central Government undertaking has to necessarily follow the policy of the Government. The contention of the petitioner to

make the five workmen referred in the claim statement permanent is untenable in view of the ban order proclaimed by the Government of India.

The respondent mill is potentially a sick unit with an accumulated loss over 35 crores. In order to tide over the situation, the management has been contemplating various steps including down sizing of workers, closure of uneconomical activities like weaving, reeling etc., for the last five years with the result during the last five years they have reduced the workers strength from 1000 to 400 by means of VRS. Even now the mill has been incurring a loss of 1 lakh per day. Added to this, the respondent mill is suffering from severe financial dues like PF, ESI, Electricity etc., and as on date Rs.1.5 crores is the outstanding dues to be cleared by the mills. When the management is gradually reducing the workers, any addition of workers would necessarily add to its burden. Hence, he prays for dismissal of the petition.

4. The point for determination is:

Whether the services of the petitioner workmen by name 1. R. Suresh Anandhu, T. No.8202, 2. A. Kumar, T.N. No. 8201. 3. G. Ramaraj, T. No.8202, 4. G. Panneerselvam, T. No.8203 and I. Kamaraj, T. No. 8204 can be regularised?

5. On the point:

This industrial dispute is filed by the petitioner for regularisation of the service of five workmen namely 1. R. Suresh Anandhu, T. No.8202, 2. A. Kumar, T. No.8201. 3. G. Ramaraj, T. No. 8202, 4. G. Panneerselvam, T. No.8203 and I. Kamaraj, T. No. 8204 by the respondent mill. The contention of the petitioner is that the said workmen were employed as casual labourers in the Electrical Department based on the settlement between the management and the workmen under section 18(1) of Industrial Disputes Act, 1947 relating to work load in the respondent mills. Ever since the date of appointment, the said workmen have been continuously engaged by the respondent and there is no break in service. The said workmen moved the General Manager of the respondent mill for their regularisation and since he did not take any action, the petitioner submitted a rejoinder, dated 22-3-2001 seeking intervention of the Conciliation Officer. But the dispute ended in failure resulting in the submission of failure report, dated 19-4-2001 by the Conciliation Officer. Hence, this industrial dispute to regularise the said workmen. To prove his contention, the learned counsel for the petitioner has cited the following decisions, wherein it is held as follows:-

1. *Chairman, Ad hoc Committee. Calcutta District Primary School Counsel and Alpana Devi and Others:-2004(5) L.L.N.S.N.O.C. No. 305:*

“Regularisation - Respondent teachers appointed on temporary basis - Continued to work over a long period against normal or additional but unapproved posts - Claim for regularisation - Exploitation envisaged under Art. 46 to weaker sections not confined to SC and ST alone - Eventhough the initial appointment was illegal services of the respondents were required - By creating a list of such teachers, held, as atmosphere of legitimate expectation had been created - Petitioners cannot take advantage of the legal principle after such a long time without taking any active steps for recruitment-Respondents held entitled to relief of regularisation- Constitution of India, Articles 46 and 226”

2. *Madurai Kamaraj University Palkalai Kalaga Anithu Vidhuthi Ooliyargal Sangam Vs. 1. Registrar, Madurai Kamaraj University and 2. Vice-Chancellor, Madurai Kamaraj University: - 2004(4) L.L.N. 686:*

“Regularisation of service - Petitioner Sangam having as its members employees working in various hostels and canteens run by respondent University for about 20 to 25 years claimed regularisation - As there was no response from University the Sangam has filed the instant writ of *mandamus* - Held, facts disclose pitiable situation in which members of the association are placed in the University - Nature of the work is not seasonal, but perennial as the University has a legal duty to run and maintain the hostels - Denial of regularisation could not be justified on ground of lack of sanctioned posts - Directions issued to regularise, as recommended by Syndicate Sub-Committee Service of employees who had put in more than 7 years”.

3. *P. Ramakrishnan and another and Union of India and another:- 2003(2) L.L.N. 7:*

“Canteen employees-Regularisation - Working as Casual Labour for more than 20 years - Hence, it is seen that requirement of their service is perennial-They are entitled to regularisation”.

6. It is admitted by the respondent that the said workmen were working as Casual Coolies on daily paid basis in the Electrical Department, since they were qualified to be engaged as Electrician/Wireman. It is also admitted by the respondent that the said workmen have been continuously engaged in the respondent company without any break in service. It is also not disputed that the workmen have been in the service for more than ten years in the respondent mill. But the learned counsel for the respondent has argued that since a ban on recruitment was already in vogue by the Government of India, the said workmen would not be considered for regularisation and relied upon the Ban Order of Government of India, which was marked as Ex.R13 and in order to prove her claim, the General Manager of the respondent company was examined as RW1.

7. RW1 in his evidence has deposed that since the ban order Ex.R13 is in force, the respondent mill is banned new recruitment.

8. *Per contra* the learned counsel for the petitioner vehemently argued and objected that Ex.R13 is not a Ban Order and it is only a letter sent by the Ministry of Textiles, New Delhi to N.T.C. Limited, Coimbatore. He further argued that even if it is taken as Ban Order, no where it is stated that no regularisation should be done.

9. On perusal of Ex.R13, it is seen that the Joint Secretary of Ministry of Textiles has sent a letter to the N.T.C. Limited and eight other mills stating that “Keeping in view the need for economy in expenditure, no fresh recruitment takes place in their organisation”. This is not a Government order. Hence, as rightly pointed out by the learned counsel for the petitioner. Ex.R13 is only a letter and not a Government order.

10. It is further stated in Ex.R13 that keeping in view the need for economy in expenditure, no fresh recruitment takes place and ban on recruitment/filling up of vacant post may be continued until any fresh orders by the Government are issued to the contrary. Hence, in Ex.R13, it is no where mentioned that regularisation should not be done. In the instant case, the petitioner workmen joined the service in the respondent mills in the year 1995 as casual labourers in the Electrical Department and they were continuously engaged by the respondent and there was no break in service, as admitted by the

respondent. In fact, the said workmen have also attained all the qualifications necessary for according permanency by way of regularisation in accordance with standing order of the respondent mills. When the respondent has admitted that the said workmen were qualified to be engaged as Electricians/Wiremen and when they are in continuous service, it is the duty of the respondent to regularise them. The contention of the respondent that the regularization of the petitioner workmen could not be sustained, since the ban order is in force cannot be accepted as Ex.R13 is not a ban order and it is only a letter sent by the Office of Ministry of Textiles and hence it is not binding on the said workmen for regularisation. Further the respondent after utilising the services of the petitioner workmen, who have been employed for the past ten years, cannot now say that they could not be regularised by taking shelter that the ban on new recruitment has been in existence for the past ten years.

11. In the counter, the respondent took a stand that the workmen were not recruited through Employment Exchange. When it is the duty of the respondent to recruit the workmen through the Employment Exchange or by paper publication, the failure to do so will not be a ground for non-regularisation of the service of the workmen involved in this dispute, particularly when they are in continuous employment and non-conferment of the regular status is only to ruse adopted by the respondent management with an ulterior motive to deny the other benefits that would accrued on the workmen consequent to the regularization of their regular service. This attitude and practice followed by the respondent are clearly an unfair trade practice and violative of labour laws. Equally, the contention of the respondent that the respondent mill is a sick unit and incurred loss and they are taking enormous steps to down size the workers is not accepted, as the expenditure is not at all a ground for refusing to regularise the service of five workmen involved in this disputes, when they are in continuous service.

12. It is further unfortunate that the petitioner workmen have been kept as casual labourers for more than ten years on daily wages, which is against law. When the services of the petitioner workmen are required on a permanent basis, nothing can stand in the way of regularization of their services. The refusal of regularization by the respondent is shocking and

it is definitely violative of law by the respondent. When there are vacancies, the daily raters are entitled to be absorbed. In the instant case, despite availability of work, the petitioner workmen are being utilised, for the work of permanent nature. They cannot now be denied regularization on the ground of ban on new recruitment. In spite of fact that the said workmen are performing regular duties throughout the year and the nature of their job being perennial, it was unjust on the part of the respondent to keep them on daily wages without any regularization. Hence, I am inclined to hold that the claim of the petitioner for regularization of the abovesaid five workmen is reasonable. Accordingly, this point is answered in favour of the petitioner.

13. In the result, this industrial dispute is allowed and the respondent is hereby directed to regularised the service of the petitioner workmen namely 1. R. Suresh Anandhu, T.No. 8202, 2. A. Kumar. T.N. No. 8201, 3. G. Ramaraj, T. No. 8202, 4. G. Panneerselvam, T.No. 8203 and 5. I. Kamaraj, T. No. 8204 immediately.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 24th day of December 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent :

RW1— 18-12-2008-Udayasankaran, General Manager of respondent mill.

List of exhibits marked for the petitioner :

Ex.A1— Time Card issued to Kamaraj.

Ex.A2— E.S.I. Identity Card issued to the petitioner workmen.

Ex.A3— Pay Slip of Kamaraj for the month of October 2000.

Ex.A4— Provident fund statement of Kamaraj.

Ex.A5— Record relating to leave with wage of Kamaraj.

Ex.A6— Time Card of Suresh Anand.

Ex.A7— E.S.I. Card of petitioner workmen.
 Ex.A8— Pay Slip of Suresh Anand for the month of October 2000.
 Ex.A9— Provident Fund statement of Suresh Anand.
 Ex.A10—Time Card of Kumar.
 Ex.A11—E.S.I. Identity Card of Kumar.
 Ex.A12—Pay Slip of Kumar.
 Ex.A13—Provident Fund account of Kumar.
 Ex.A14—Record relating to leave with wages of Kumar.
 Ex.A15—Time Card of Ramaraj.
 Ex.A16—E.S.I. Identity Card of Ramaraj.
 Ex.A17—Pay Slip of Ramaraj.
 Ex.A18—Provident Fund statement of Ramaraj.
 Ex.A19—Record relating to leave with wages of Ramaraj.
 Ex.A20— Time Card of Panneerselvam.
 Ex.A21— E.S.I. Identity Card of Panneerselvam.
 Ex.A22— Pay Slip of Panneerselvam.
 Ex.A23— Record relating to leave with wages of Panneerselvam.
 Ex.A24— Copy of representation, dated 23-11-2000.
 Ex.A25— Copy of representation, dated 24-11-2000
 Ex.A26— Copy of reply, dated 9-2-2001 by respondent mill.
 Ex.A27— Copy of representation, dated 22-3-2001 made by petitioner Suresh Anand and another.
 Ex.A28— Copy of failure report, dated 19-4-2001 submitted by Conciliation Officer.

List of exhibits marked for the respondent :

Ex.R1— Show cause notice, dated 25-8-2003.
 Ex.R2— Acknowledgment card.
 Ex.R3— Enquiry notice, dated 6-9-2003.
 Ex.R4— Acknowledgment card.
 Ex.R5— Enquiry notice, dated 19-11-2003.
 Ex.R6— Acknowledgment card.
 Ex.R7— Enquiry notice.
 Ex.R8— Enquiry proceedings, dated 16-9-2003.
 Ex.R9— Findings of the enquiry, dated 5-2-2004.
 Ex.R10— Second show cause notice, dated 28-2-2004.
 Ex.R11— Refused to receive the notice.
 Ex.R12—Final order, dated 24-6-2004.

Ex.R13—Photocopy of the ban order, dated 13-7-1992.
 Ex.R14—Financial statement of the mill.
 Ex.R15—Letter, dated 15-3-2002 from N.T.C. Coimbatore.

E.M.K.S. SIDDHARTHAR,
 II Additional District Judge,
 Presiding Officer,
 Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 53/AIL/Lab./J/2010, dated 18th March 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 16/2003, dated 18-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Deepak Cables (India) Limited, Puducherry and their 70 workmen represented by Thiru E.Thirumalai over their non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
 Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L., II Additional District Judge, Presiding Officer, Labour Court.

Wednesday, the 18th day of November 2009

I.D. No. 16/2003

E.Thirumalai,
 Workmen's Representative,
 33, Siva Koil Street,
 Thiruvandarkoil,
 Pondicherry-605 102 . . Petitioner

Versus

The Management of Deepak
Cables (India) Limited,
7, Whirlpool Road,
Thiruvandarkoil,
Pondicherry-605 102 . . . Respondent

This industrial dispute coming on 16-11-2009 for final hearing before me in the presence of Thiruvalargal V. Prakash and R. Mugundhan, Advocate for the petitioner and Thiru R. Ilacheliyan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.97/Lab./AIL/J/2003, dated 14-7-2003 for adjudication of the following industrial dispute that arose between the Management of Deepak Cables (India) Limited, Pondicherry and its 70 workmen adjudicating the following:—

(a) Whether the non-employment of seventy workers as per Annexure-I by the management of M/s. Deepak Cables (India) Limited, Pondicherry is justified or not?

(b) If not justified, what are the remedies/relief, they are entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. In the claim statement filed by one E. Thirumalai, who is workmen's representative, it is submitted that they are about 150 workers employed by the respondent management. They are machine operators, fitters, electricians, quality checking, packing, loading and unloading persons etc., They were paid wages for below than the minimum wages. They represented to the Government against under payment. The respondent company suddenly took a stand that they are all contract labourers and that they are not in the rolls of respondent company. The said Thirumalai was transferred from Pondicherry to Kunigal Unit, Karnataka State on 15-12-2002 without any reason and as a measure of victimisation. The respondent company terminated the services of

70 workers from 7-3-2002. The respondent company indulged unfair labour practice to terminate the services of workers which is unjustified and against the principle of natural justice. The list of 70 workers are enclosed in the statement. Hence, the petitioner prays for reinstatement of all the workers with back wages and continuity of service.

3. In the counter statement, the respondent has stated that out of 70 workers shown in the claim statement, only 11 persons shown as Serial Nos. 3 to 9, 15, 39, 41 and 56 are the workers under the respondent and others are contractual labourers engaged by the contractor. That too, of the said 11 persons, one was transferred, four resigned, 5 voluntarily abated the duties and another one resigned. The allegation that the workers were paid wages far below the minimum is false. The respondent did not victimise any one. The claim petition deserves to be dismissed.

4. During enquiry, on the side of the petitioner, no witness was examined and Ex. A1 to Ex.A10 were marked by consent. On the side of the respondent, no witness was examined and Ex.R1 to Ex.R18 were marked by consent.

5. The point for determination is:

Whether the non-employment of seventy workers as per Annexure-I by the management of M/s. Deepak Cables (India) Limited, Pondicherry is justified or not?

6. *On the point :*

It is an admitted case that E. Thirumalai, who is workmen's representative was transferred from Pondicherry Unit to Kunigal Unit, Karnataka State and that he did not go to join duty in Kunigal Unit after being relieved from Pondicherry. A perusal of Ex.P1 would reveal that E. Thirumalai was transferred on 15-12-2001 from Pondicherry Unit to Kunigal Unit on administrative grounds and he was directed to report for duty within ten days. It is also mentioned that he will be paid travelling charges. During the arguments, it was highlighted that subsequent to the transfer of the said Thirumalai from Pondicherry Unit to Kunigal Unit, the problem started and 70 workers, who were not given work by the management, started agitation for giving them employment. Therefore, it is clear that the transfer of Thirumalai to Kunigal Unit triggered the trouble with the respondent

management, in which, other workers were also victimised.

7. It is the case of the respondent that 11 of 70 workers were under the direct employment and that the rest of them were contractual labourers engaged by the contractor of the respondent. Copies of the documents were produced and marked by consent. The conciliation proceedings ended failure and there is no compromise arrived at.

8. The respondent did not produce any document in support of his contention that except 11, the rest of them are contractual, labourers engaged by his contractor. On the side of the respondent, the application for registration is marked as Ex.R2. On perusal of Ex.R2, *i.e.*, letter, dated 7-5-2002 from Registering Officer under the Contract Labour Act, it is seen that various conditions have been enumerated to the respondent company. In the Form No. 1 *i.e.*, application for registration of establishment employing contract labour, Column No. 6 refers to the particulars of contractors, Column No. 6 (a) relating to name and address of the contractor and column No. 6 (b) relating to nature of work in which contract labour is employed or to be employed. It is mentioned in Column 6(b) as "security, floor sweeping, toilet cleaning gardening, loading of finished goods, unloading of raw materials." Column No. 6 (c) is important. Maximum number of contract labour to be employed on any day through the each contractor is mentioned as "contract No. 1: 20 workers, contract No. 2: 20 workers." The period of contract is only till 31st July 2002.

9. As already stated, the whole problems started after transferring the said Thirumalai from Pondicherry Unit to Kunigal Unit with effect from 15-12-2001. The respondent has not produced any document as to who are all the labourers engaged by two contractors. When the maximum number of labourers that could be employed by two contractors is only 40 (each 20), the dispute with regard to the 70 workers itself shows that the workers are not the contractual labourers, but the workers under respondent company. In fact one of the conditions stipulated in the communication is that the principal employer should ensure the presence of his authorised representative at the time of disbursement of wages and should record his signature and a certificate to the effect that the amount of wages has

been disbursed to the labourers in his presence. If really the claim of the respondent is true that except 11 workers, the rest of them are the contractual labourers employed under his contractor, the respondent should have produced the documents in proof of that fact. The respondent has failed to do so. It is, therefore, held that 70 workers cannot be taken as contract labours engaged by the contractors to the respondent company.

10. It is further held that they are workers directly engaged by the respondent. The termination of 70 workers by all of a sudden is against all norms of industry and law.

11. At the same time, it is pointed out that the worker E. Thirumalai should have joined Kunigal Unit in compliance with the order of transfer given to him on administrative grounds. Instead of going and joining at Kunigal Unit, the said Thirumalai cannot come before this court to say that his transfer was effected on *mala fide* ground and that he should be allowed to work in Pondicherry Unit. The employee cannot choose a place of work. It is for the employer to choose a place, where the workers should work. Therefore, viewing this fact in that angle, the said Thirumalai shall go and join at Kunigal Unit immediately and three months after his joining duty at Kunigal Unit, the said Thirumalai can submit representation to the respondent company, requesting for transfer back to Pondicherry, citing his family situation or health ground or on acceptable reasons of attending of his children, if any studying in the schools at Pondicherry and the management/respondent can consider his representation without regard to the present dispute raised by him.

12. As already stated, it is unjust on the part of the respondent company to throw out all the seven workers, simply stating that there are not his workers directly engaged, but engaged by his contractor and therefore they are not his workers. The respondent failed to substantiate his claim in this regard. This court feels that a dispute is normally raised only, when some victimisation is done. In this case, this court is satisfied that throwing out of employment of about 70 workers by the respondent is unjustified and it is for this court to come to the rescue of 70 workers thrown out of the employment. Hence, the claim of the petitioner for reinstatement of 70 workers is justified. Accordingly, this point is answered.

13. In the result, this industrial dispute is allowed and the respondent is hereby directed to reinstate all the 70 workers in the company within three months from the date of this Award and the respondent company is also hereby directed to pay the back wages to the said workers. As far as E. Thirumalai is concerned, his reinstatement is ordered along with rest of the workers, but his reinstatement is subject to the condition that he shall report for duty at Kunigal Unit immediately.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 18th day of November 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil.

List of witnesses examined for the respondent : Nil.

List of exhibits marked for the petitioner :

- Ex.A1— Transfer Order sent to Thirumalai, dated 15-12-2001.
- Ex.A2— Copy of the letter sent to the Labour Officer by the workmen.
- Ex.A3— Copy of the letter, dated 14-3-2002, sent by the respondent company to the Conciliation Officer.
- Ex.A4— Copy of the letter, dated 2-4-2002 sent by petitioner's union to the Labour Department.
- Ex.A5— Copy of the letter, dated 3-4-2002 sent by the respondent company to the Conciliation Officer.
- Ex.A6— Copy of the letter, dated 9-4-2002 sent by the petitioner's union to Labour Commissioner.
- Ex.A7— Copy of the letter, dated 1-7-2002 sent by the petitioner's union to Conciliation Officer.
- Ex.A8— Copy of the letter, dated 10-12-2002 sent by the petitioner's union to Labour Department.

Ex.A9— Copy of the letter, dated 30-12-2002 sent by petitioner's union to Labour Department.

Ex.A10—Copy of the letter, dated 3-7-2002 sent by the Labour Officer to the Secretary to the Government.

List of exhibits marked for the respondent :

- Ex.R1— Copy of the letter, dated 14-3-2002 sent by respondent company to the Labour Officer.
- Ex.R2— Copy of Form-I (Application for Registration).
- Ex.R3— Copy of the failure report, dated 3-7-2002 sent by Conciliation Officer to the Secretary to Government.
- Ex.R4— Copy of Register of Wages.
- Ex.R5— Copy of Register of Wages.
- Ex.R6— Copy of Register of Muster Roll.
- Ex.R7— Copy of Transfer Order of Thirumalai, dated 15-12-2001.
- Ex.R8— Copy of the letter, dated 6-3-2002 sent by Azhagar to the respondent company.
- Ex.R9— Copy of the letter, dated 7-3-2002 sent by Soundararajan to the respondent company.
- Ex.R10—Copy of the letter, dated 6-3-2002 sent by Villijayan to the respondent company.
- Ex.R11—Copy of the letter, dated 11-2-2002 sent by Parthasarathi to the respondent company.
- Ex.R12—Copy of show cause notice, dated 9-4-2002 sent to Ganesan.
- Ex.R13—Copy of show cause notice, dated 9-4-2002 sent to Karunakaran.
- Ex.R14—Copy of show cause notice, dated 9-4-2002 sent to Kanakaraj.
- Ex.R15—Copy of show cause notice, dated 9-4-2002 sent to Panneerselvam.
- Ex.R16—Paper publication.

Ex.R17—Copy of the letter, dated 3-4-2002 sent by the respondent company to the Conciliation Officer.

Ex.R18—Copy of the letter, dated 16-5-2002 sent by Labour Contractor to the respondent company.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வகுபு துறை
(அரசு ஆணை பலவகை எண் 11/செந்/கோ.4/2010,
நாள் 2010 வரு மார்ச் ம் 18 இ)

ஆணை

புதுச்சேரி மாநிலம், அரியாங்குப்பம் கொம்யூன், திம்மநாயக்கன்பாளையம், அருள்மிகு முத்து மாரியம்மன், சுந்தர விநாயகர் ஆலயம் அரசு ஆணை பலவகை எண் 11/செந்/கோ.4/2003. நாள் 7-3-2003-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிருவகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்து விட்டது.

2. இந்நிலையில், மேற்குறிப்பிட்ட தீருக்கோயிலை நிருவகிப்பதற்கு ஒரு புதிய அறங்காவலர் வாரியம் அமைக்க வேண்டியது இன்றியமையாததாகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, மேற்கூறிய திம்மநாயக்கன்பாளையம், அருள்மிகு முத்து மாரியம்மன், சுந்தர விநாயகர் ஆலயத்திற்கு பின்வரும் ஜந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது.

தீருவாளர்கள் :

(1) சம்பந்தம். . . தலைவர்
த/பெ. தாமோதரன்,
எண் 32, வன்னியர் தெரு,
திம்மநாயக்கன்பாளையம்,
அரியாங்குப்பம் கொம்யூன்,
புதுச்சேரி-605 007.

(2) சீனுவாசன். . . துணைத்
தலைவர்
த/பெ. வெங்கடசாமி,
எண் 17, ரெட்டியார் தெரு,
திம்மநாயக்கன்பாளையம்,
அரியாங்குப்பம் கொம்யூன்,
புதுச்சேரி-605 007.

(3) கலிவரதன். . . செயலாளர்
த/பெ. சுப்ரமணி,
எண் 5, தோப்புத் தெரு,
திம்மநாயக்கன்பாளையம்,
அரியாங்குப்பம் கொம்யூன்,
புதுச்சேரி-605 007.

(4) முனுசாமி. . . பொருளாளர்
த/பெ. வெங்கடேசன்,
எண் 6, உடையார் தெரு,
திம்மநாயக்கன்பாளையம்,
அரியாங்குப்பம் கொம்யூன்,
புதுச்சேரி-605 007.

(5) கோவிந்தராச். . . உறுப்பினர்
த/பெ. கீருஷணாஜி,
எண் 54, மாரியம்மன் கோயில் தெரு,
திம்மநாயக்கன்பாளையம்,
அரியாங்குப்பம் கொம்யூன்,
புதுச்சேரி-605 007.

4. 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன் கீழ் உருவாக்கப்பட்ட விதிகளுக்குட்பட்டு அறங்காவலர் வாரியம் ஆலயத்தை நிருவகிக்கக் கடமைப்பட்டது ஆகும்.

5. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் இவ்வரசாலை பிறப்பிக்கப்பட்ட தேதியிலிருந்து மூன்று ஆண்டுகள் ஆகும். திடற்கிடையில் அரசு வாரிய உறுப்பினர்களை நீக்கினால் தவிர அல்லது தகுதி இழுக்கச் செய்தால் தவிர அல்லது வாரிய உறுப்பினர்கள் தங்கள் பதவிகளை இராஜினாமா செய்யுங்கால் அவர்களின் இராஜினாமாவை அரசு ஏற்றுக் கொண்டால் தவிர, வாரிய உறுப்பினர்கள் பதவியில் இருப்பதாகக் கருதப்படும்.

(துணைநிலை ஆளுநரின் ஆணைப்படி)

இரா. அருணாச்சலம்,
அரசு சார்புச் செயலர் (கோயில்கள்).

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (ART AND CULTURE)

(G. O. Ms. No. 38, dated 22nd March 2010)

ORDER

In partial modification of the G. O. Ms. No. 9, dated 19-2-2007 of the Chief Secretariat (Art and Culture), Puducherry, the Lieutenant-Governor is pleased to modify the Expert Committee Member for selection of indigent artistes referred at paragraph 1 Sl. No. 2 [i.e., Kalaimamani (late) Thiru Dinakaran] as Kalaimamani Thiru Lincoln Many (Drama).